

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 1h Streamlining

Streamlining is better/more efficient

Commenters provided general support for streamlining as it would make the permitting process more efficient and expedite permit review for a range of private and public projects and still protect the environment (0049-A1, 0058-A1, 0082-A1, 0166-A1, 0086-A1, 0198-A1, 0210-A2, 0266-A1, 0416-A2, 0416-A3, 0416-A4, 0429-Justin Wolfe, Ed Thomas).

Several commenters asserted (0082-A2, 0166-A1, 0210-A2) that the resulting streamlining of the permit process will make it more efficient by reducing the current unnecessary duplication of effort, time and expense, of a process where the substantive requirements of the State's Environmental Resource Permit (ERP) program and the Section 404 program overlap by approximately 85%. Commenters (0082-A1 and 0429-Ed Thomas) said that the single state permit would be able to satisfy both federal and state requirements and provide permit applicants greater certainty, prevent conflicts, and avoid unnecessary delays and expenses that result from the current dual-permit program.

More than a dozen local homebuilders associations (0058-A1, 0059-A1, 0060-A1, 0061-A1, 0062-A1, 0063-A1, 0064-A1, 0065-A1, 0167-A1, 0068-A1, 0068-A2, 0069-A1, 0084-A1, 0085-A1, 0087-A1, 0088-A1, 0214-A1, 0404-A2) (0058-A1 form letter commenters) submitted a form letter and contended that the Assumption would streamline the permitting process and thus reduce processing time and associated costs. The form letter commenters (0058-A1) stated that Florida Environmental Resource Permits are received prior to their federal counterparts because of the unnecessary delays, and that despite the time difference, the permits are often indistinguishable. The 0058-A1 form letter commenters claim that the unnecessary delays are costly—they increase the cost of Florida housing, preventing families from buying a home. The 0058-A1 form letter commenters also claim that the delays do not add any meaningful environmental protection. Furthermore, the 0058-A1 form letter commenters say that Federal review often introduces new issues of concern in the final hours, further delaying the process and increasing cost. The 0058-A1 form letter commenters claim that Florida is prepared to launch a program that protects Florida's wetlands while avoiding costly delays. The 0058-A1 form letter commenters contend that allowing Florida to assume section 404 permitting, families seeking home ownership will be relieved from at least one price pressure point.

One commenter (0214-A1) urged EPA to continue to remove obstacles to Section 404 state assumption and work with other states to make the CWA more efficient for permittees and effective in environmental protection. Commenter (0429-Justin Wolfe) noted that approval of Florida's application would also demonstrate a workable pathway for states interested in administering their own Section 404 programs while also providing valuable flexibility for EPA and individual states to develop programs that match state-specific needs.

Commenter (0429-John Goolsby) supported the FL Assumption as it eliminates the need for an additional layer of bureaucracy and permanent costs that are now evident and state control will likely reduce the review timeframes significantly, benefitting Florida businesses and agricultural entities. Commenter (0429-Lance Pierce) also said the frequent and significant delays in the federal processing of Section 404 permit applications add time and project costs to many of our members' developments while doing nothing to protect our state's natural resources.

Commenters highlighted issues with the federal process that streamlining would address.

Comments from Florida members of Congress (0416-A2, 0416-A3, 0416-A4) focused on the positive impact of faster permit issuance on restoration efforts, particularly in the Everglades. These commenters expect that the Everglades restoration efforts will benefit from expedited permit delivery timelines, allowing state and federal agencies to move forward with construction of key infrastructure more quickly than they are able to do today. Commenter (0416-A3) noted that expedited construction of the Central Everglades Planning Project, the Everglades Agricultural Area Reservoir, and other projects around Lake Okeechobee are essential to improving the health of the Everglades ecosystem and enhancing the resilience of the communities that live, work, and recreate there as well. While important restoration progress has been made in recent years, the overall program has been plagued by design, permitting, and construction delays under the U.S. Army Corps of Engineers. Commenter (0416-A3) continued that on several occasions, the State of Florida and the South Florida Water Management District have had to assume responsibility for certain project elements from the Corps of Engineers to expedite project delivery at lower cost. Commenter (0416-A3) concluded that with so much at stake, we can no longer accept unwarranted delays in permitting for ecosystem restoration projects and believe that the DEP would accomplish the task of permitting these critical projects in a significantly more timely and responsive manner than the Corps.

One commenter (0166-A1) commented that at the federal level, high staff turnover, workloads, inefficient and untimely review processes, and open-ended timeframes for legal challenges lead to frequent and significant delays in the processing of Section 404 permit applications. They (0166-A1) provided the example, that they say is not uncommon, for a Corps permit reviewer sent on temporary assignment out of the State in the middle of a permit review, at which point a new reviewer is assigned with little or no prior coordination, and the review process grinds to a halt while the new reviewer gets up to speed.

The commenter (0166-A1) also noted that DEP reviewers (0166-A1) are accustomed to following strict timeclocks for processing Environmental Resource Permits (ERPs) and requesting additional information necessary to render a final permitting decision (§ 373.4141, Fla. Stat., and Rule 62-4.055, F.A.C.). Lengthy delays in state application reviews are uncommon. The Florida permitting process is designed to winnow issues until all questions are resolved and a permit is either issued or denied. Id. Commenters (0166-A1, 0527-A1) contrasted this with the Section 404 permitting process which provides no meaningful time constraints for agency decisions, processing delays are a regular occurrence, and the 11th hour introduction of new agency questions and concerns is not uncommon. Commenter (0166-A1) also claimed that as a result, Florida ERPs are regularly received months or even years in advance of the Section 404 permit, yet the Section 404 permit rarely if ever has more restrictive or different substantive

conditions from the ERP, and provided the example of six general conditions required to be included in every individual Section 404 permit, while 18 general conditions must be included in individual ERPs (33 CFR Part 325, Appendix A; cf Rule 62-330.350, F.A.C.). These permitting delays at the federal level thus do not add meaningful environmental protection; they only add time and project costs.

Commenters also noted the expertise of the DEP that would support streamlining and result in environmental protection.

Commenters (0166-A1, 0082-A2) pointed out, that unlike the Section 404 program, the State ERP program regulates not only activities in connected wetlands and surface waters, but also most alterations of land that change the flow of water, even if the activity is in uplands (§§ 373.413, 373.414, Fla. Stat.). The State's proposed program will boost the protection of Florida's wetlands and water resources by having the same statewide team of experts who already administer the state level ERP program also administer the substantially similar federal 404 program (0166-A1, 0049-A1, 0429-Christopher Emanuel, David Childs).

Florida members of Congress (0416-A2) pointed out that Floridians care deeply about their environment and unique natural resources, and can deliver the benefits of streamlining while sustaining protections for wetlands and endangered species that are no less rigorous than today under federal 404 program administration. Several Florida members of Congress (0416-A4) pointed to the DEP as best positioned to utilize local knowledge, scientific expertise, and robust stakeholder engagement to assess the potential impacts of permitted activities, delineate protective conditions for permitted activities, and set suitable compensatory mitigation requirements. Congressional commenters also asserted that the DEP would accomplish the task of permitting these critical projects in a significantly more timely and responsive manner than the Corps (0416-A3).

Streamlining will have negative effects on the environment

Commenters noted that one of the FL Assumption primary goals, is to streamline the process by eliminating duplicative processes during the review and reducing the timeframe for issuing permits. This streamlining will weaken the permit review process with negative environmental results (Commenters 0169-A1, 0211-A2, 0251, 0386-A1, 0501-A1, 0429-Marjorie Laurent, Preston Robertson, Karen Garren, 0430-Albert Gomez, Beth Alvi, Jim Tatum, Brad Cornell).

Commenter (0211-A2) was concerned that the emphasis of the state's commitment to "streamline" the wetland permitting process for the sake of continued development exhibits a lack of commitment to properly review the impact of wetland loss. They noted that the state of Florida has already lost over 50% of its historical wetlands and the state's assumption to speed through the permitting process will exacerbate this loss. Any additional wetland loss without a clear assessment of the cumulative impacts to the environment will further degrade water quality. Commenter (0211-A2) also commented that the current 404 permit process allows for a comprehensive review by federal agencies, including the U.S. EPA, U.S. Fish and Wildlife Service, NOAA and the National Marine Fisheries Service, with extensive experience and expertise in federal threatened and endangered species. They disagreed with the state's

suggestion that this federal expertise would still be available, as the planned permit "streamlining" will not allow for the appropriate time for these important consultations to take place.

Commenter (0430-Beth Alvi) commented on concerns expressed by FL Assumption proponents that the Corps' permitting slows down completion of much-needed restoration projects and therefore there is a need to streamline processes. She noted, however, that Audubon Florida is responsible for a few Gulf restoration projects in Florida that required Army Corps 404 permits. Audubon Florida did not find Army Corps' procedures to be a barrier, nor did they face any unnecessary delays in the permitting and review process and valued the Corps' participation in permitting their projects. Another commenter (0430, Brad Cornell) also commented that Audubon Western Everglades objects to any wetland regulatory streamlining, combining a federal program with the state program, when both these programs have resulted in over 30,000 acres of wetland losses since 1996 in just Lee and Collier Counties alone. Those wetland losses speak to the ill preparation and the unready nature of DEP and the Army Corps of Engineers to combine their programs in the state of Florida. Commenter (0430, Elise Brady) expressed concern that special interests, state budget constraints, lack of expertise, and potential outsourcing will lead to cutting corners and rubber stamping in the name of streamlining permits.

Commenter (0429-Karen Garren) noted that wetland protection in Florida has been eroded by governing administrations as the permitting process has been, "fast-tracked," accelerating deadlines for review and decisions. This commenter went on to provide examples. Acreage sites of wetlands to be considered for permitting has been increased. Water management districts staff and scientists have been dismissed or had their opinions stifled. District governing boards have been stacked with development interests. Qualified technical advisers had testimony disqualified. Constitutional amendments protecting natural resources that have been passed by ballot elections have been stalled, subverted, and ignored. Legislation has been passed requiring public opinion statements to come from, "stakeholders," criteria established by the state. While disturbance of designated wetland soils is regulated, every year, tens of thousands of cypress trees are chipped to be sold as mulch. The commenter concluded that Florida governing administrations have made a deal with the devil, and the devil is money, and Florida's coastal development demonstrates the lack of protection for our and property integrity.

Other commenters (approximately 387) submitted a form letter (form letter 0516-A1) stating that streamlining the wetland permitting process without a more complete understanding of the cumulative impacts of wetland loss would be catastrophic for Florida's ecosystems that are already struggling.

Commenter (0430-Alison Kelly) expressed concern that streamlining wetlands permits will destroy precious water resources that many endangered species in Florida, over 130 listed species, call home.

Developers want this for faster permits approvals at the expense of the environment

Multiple commenters (approximately 806 and 498, respectively) submitted form letters (form letters 0226 and 0517) opposing the Florida Assumption, expressing their concern that approval of the Florida Assumption would fast-track development permits.

Commenters (0021, 0067-A1, 0209-02, 0233, 0430-Rachael Uhland, Sandra Chiappetta, Matthew Schwartz) noted that the proponents of the FL Assumption cite expediting permit requests as a primary benefit. The commenters agree that FL assumption would speed up the permit process, but do not agree that this acceleration would be a good thing. Commenter (0209-A2) commented that ERP permit application processing time clock leads to default issuance of an ERP permit, while the Federal Section 404 permit application review process has no such default issuance mechanism.

Commenters (0067-A1, 0209-A2, 0220, 0225, 0226, 0386-A1, 0398, 0400, 0455-A1, 0487-A1, 0543-A1, 0430-Rachael Uhland, Sandra Chiappetta, Diana Umpierre, Sarah Younger, Matthew Schwartz) assert that the state favors developers often at the expense of Florida waterways and believe this will fast-track development permits for powerful special interests. Commenter (0400) noted that if the request is granted, development permits for powerful special interests that want to exploit Florida's wetlands for profit will be 'fast-tracked', in spite of the objections of Floridians whose livelihoods, and recreation rely on wetland conservation.

Commenter (0209-A2) commented that the State Water Management Districts (WMDs) process over 70% of the ERP permit actions. Due to the existing political and policy influences on the State ERP program, the FDEP/WMD permitting staff see the permit applicants as their clients, not the natural environment and the wetland/water resources of Florida. Simply stated, the FDEP and the WMD ERP permitting programs hardly ever actually deny ERP permits authorizing destruction of wetlands for development projects. The State never says no.

Commenter (0430-Rachael Uhland) commented that what Florida needs, however, is more scrutiny and review of permit applications that threaten our wetlands, not less. In Florida, DEP considers permit applicants to be their constituency, rather than the public and the state's natural resources. In the prior EPA public hearing, only industry interest supported assumption, and they did this with claims of delay at the federal level. But what developers see as delay reflects things such as vital NEPA review, public participation, analysis of listed species issues, and other elements intended to ensure protection of Florida's environment.

Commenter (0430-Matthew Schwartz) thinks that this is all about speed and the Army Corps does not deny applications, as a rule, but they do take their time. The commenter says they do due diligence, they go through NEPA, when necessary, they turn it over to the Fish and Wildlife Service. The commenter contends the developers do not want the delay—they want to speed this up, and the DEP is very willing to do that. Finally, the commenter recommends EPA deny Florida's proposal to assume the Section 404 program—keep the review process within the federal government.

Commenter (0430-Matthew Schwartz) also raised concerns about streamlining in the context of the M-CORES project—320 miles of new highway from Collier to the Florida-Georgia border that will go through wetlands and cross streams and rivers. The commenter noted that the M-CORES project will need all kinds of wetland permits and, normally, those would go through the Corps, therefore this is not the time to streamline the process.

Commenter (0033-A1) noted that with sustainability plans set forth by counties and cities to prepare for sea level rise and climate change, now is the wrong time to streamline the destruction of what little Florida has left. The commenter went on to say, wetlands protect us and requested that EPA do not turn the destructive permitting process to destroy them over to a process that will exacerbate an already unmanageable load of requests. Commenter (0225) also noted that Climate Change is impacting Florida. Wetlands are one of the tools to reduce these impacts. The commenter believes this is the wrong time to make destruction of wetlands more streamlined and easier on developers.